S.B. Civil (Sales Tax) Revision Petition No. 138/2005
Assistant Commissioner, CTO, Rajsamand
vs
M/s. Poornima Marble

DATE OF ORDER : - 22.8.2005

HON'BLE MR. PRAKASH TATIA,J.

Mr. Sangeet Lodha, for the petitioner

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Heard learned counsel for the petitioner.

It appears that the respondent-assessee claimed tax benefits for the machinery which according to respondent, he purchased for establishing new industrial unit. This benefit was claimed under the notification dated 27th March, 1995. This benefit was made available to those, who commenced their production between 27th March, 1995 to 31st March, 1997 and would be eligible under the scheme. The assessing authority while considering this aspect of the matter held that since the assessee started production on 28th May, 1995, therefore, he is not entitled for the tax exemption benefit on the purchases of the machineries which assessee-claimant purchased after setting up of industries.

The respondent-assessee preferred appeal before the Dy. Commissioner (Appeals) against the order of assessment dated 13.1.98. The appellate authority reached to the conclusion that in fact, commercial production was started from 28th August, 1995 and

purchased the machinery prior to this date, therefore, the respondent-assessee is entitled for the benefit of tax exemption. However,the Tax Board vide its order dated 13th May, 2003 after setting aside the order of the appellate authority dated 22nd March, 2001 remanded the matter back to the Dy. Commissioner, (Appeals) to find out whether the respondent's unit started commercial production of their newly set up unit on 28th May, 1995 or 28th August, 1995.

According to learned counsel for the petitioner, the appellate authority without recording any reason, held that the respondent unit started commercial production from 28th August, 1995 and in fact, the assessing authority had not committed any illegality in holding that commercial production started on 28th May, 1995 and, therefore, purchase of machinery subsequent to it are not exempted from the tax liability. According to learned counsel for the petitioner even there was no material available on record to justify for taking a view that commercial production started from 28th August, 1995. According to learned counsel for the petitioner in view of the above, the Tax Board also committed serious illegality and the matter could have been examined by the Tax Board itself. Therefore, according to learned counsel for the petitioner, the order of remand is illegal and the Tax Board failed to exercise its jurisdiction while deciding the appeal of the petitioner and the remand should not have been ordered for holding an enquiry for which the assessee did not produce any evidence.

I considered the submissions of learned counsel for the petitioner. It is clear from the order of the appellate court that appellate court recorded finding that the assessee-respondent started commercial production 28th August, 1995 and the Tax Board after considering the facts of the case in detail, found that this is a relevant fact and since the appellate authority did not apply its mind to the question of fact on the basis of material on record, therefore, the question of fact should be decided by the appellate authority itself. The Tax Board since has not decided any issue against the petitioner and directed the appellate authority to decide the question of fact for which even the petitioner itself had grievance, therefore,this Court is not inclined to interfere in revisional jurisdiction in such a matter where the very foundation for the claim of the assessee is required to be judged afresh by the fact finding authority itself and the first appellate court can certainly look into the matter again to find out which is the exact date of commercial production of the respondent-unit.

In view of the above, the revision petition of the petitioner is dismissed.

(Prakash Tatia), J.

c.p.goyal/-